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3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 JOSH DONLEY,

7 Plaintiff,

8 v.

9 RONALD FRAKER and SGT. T.
10 SCHNEIDER,

11 Defendants.

No. C11-5995 RBL/KLS

ORDER DENYING MOTION TO STAY
AND GRANTING MOTION EXTENSION
OF TIME TO FILE RESPONSE TO
MOTION TO DISMISS

12 Presently pending before the Court is Defendants' Motion to Dismiss. ECF No. 14.
13 Defendants move for dismissal of Plaintiff Josh Donley's complaint, arguing that he has failed to
14 exhaust the administrative remedies available to him. *Id.* Defendants filed their Motion to
15 Dismiss on February 2, 2012, and the motion was noted for March 2, 2012, making Plaintiff's
16 response due on February 24, 2012. *Id.* On February 29, 2012, Plaintiff filed a motion entitled
17 "Motion for Extension of Time to File Response to Defendants' Motion to Dismiss" but the
18 motion is actually a request that this matter be stayed while the Court "clarify" a Department of
19 Corrections policy regarding his right to photocopies. ECF No. 15, pp. 3-4. The Court declines
20 to do so. Instead, Plaintiff will be given a short time to file his response to Defendants' motion
21 to dismiss.

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23 **DISCUSSION**

24 An extension of time should only be granted for good cause and with the Court's consent.
25 Fed. R. Civ. P. 6(b)(1). In his declaration and the facts section of his motion, Plaintiff states that
26 he was denied law library access. However, the record reflects otherwise.

1 Between the filing of Defendants' Motion to Dismiss and the filing of Plaintiff's Motion
2 for Extension of Time, Plaintiff accessed the law library at the Clallam Bay Corrections Center
3 (CBCC) nine times. ECF No. 19-1 (Declaration of Barbara J. Gronseth), Exhibit 1, Attachment
4 C. Plaintiff alleges he was denied access to the law library on February 19, 20 and 22, 2012.
5 ECF No. 15, p. 2. However, he was not scheduled for law library access as requested on
6 February 19 because availability was limited. Moreover, although Plaintiff could have requested
7 "priority access" for additional law library time, he did not submit forms requesting such access.
8 Plaintiff is familiar with the process of obtaining "priority access" because he has done so in the
9 past. When his "priority access" has expired, the Plaintiff was aware he could submit a form to
10 renew his "priority access." Plaintiff did not renew his "priority access" until February 23, 2012.
11 *See id.* (Gronseth Decl.), ¶ 8; Attachments A and B.
12

13 On February 20, 2012, the CBCC law library was closed because of the Presidents' Day
14 holiday. *Id.*, at ¶ 9. Plaintiff did not go to the library On February 22, 2012, because he, along
15 with two other offenders, was turned around at the gate when they attempted to move between
16 different sections of the CBCC facility. *Id.*, at ¶ 10. While the exact reason for this is not
17 documented, it is likely because the three offenders were trying to move about the facility after
18 the specified movement period had expired. *Id.* In spite of Plaintiff's complaint that he was
19 unable to attend the library at various times, he admits that his response was ready to file on
20 February 23, 2012. ECF No. 16 (Declaration of Josh Donley), ¶ 5.
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23 By his own admission, therefore, Plaintiff has not been hindered by the alleged denial of
24 library access. Therefore, his claim of denial of library access does not constitute good cause to
25 stay this action or extend his time to file his response.
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1 Plaintiff also asserts that the Constitution requires Defendants to pay for photocopies of
2 the statutes and policies that he wishes to attach to his response. He is incorrect. The
3 Constitution does not require Defendants to provide items such as legal supplies and copies to
4 indigent offenders. *See e.g., Gluth v. Kangas*, 951 F.2d 1504, 1510 (9th Cir. 1991). The
5 “expenditure of public funds [on behalf of an indigent litigant] is proper only when authorized by
6 Congress....” *United States v. MacCollom*, 426 U.S. 317, 321, 96 S. Ct. 2086, 2089, 48 L. Ed. 2d
7 666 (1976). The *in forma pauperis* statute, 28 U.S.C. § 1915, provides only for the payment of
8 filing fees and service of process. 28 U.S.C. § 1915 (1982). *See also Tedder v. Odel*, 890 F.2d
9 210, 211-12 (9th Cir.1989) (per curiam) (holding that 28 U.S.C. § 1915 does not entitle plaintiffs
10 to “a waiver of witness fees”). In *Silva v. Di Vittorio*, 658 F.3d 1090 (9th Cir. 2011), the Ninth
11 Circuit reiterated the limited role prison authorities have in assisting prisoners with their
12 litigation. Prison authorities are only required to assist inmates in the preparation and filing of
13 meaningful legal papers by providing prisoners with adequate law libraries or adequate
14 assistance from persons trained in the law. *Silva*, 658 F.3d at 1102 (quoting *Bounds v.*
15 *Smith*, 430 U.S. 817, 828 (1977)).

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18 Likewise, DOC policy does not require Defendants to provide free copies to Plaintiff.
19 The policies mandate that staff will photocopy “legal pleadings” for offenders and that
20 indigent offenders will be allowed to incur a debt to pay for those pleadings. DOC 590.500,
21 Legal Access For Offenders, VII(A)(1)-(2). Plaintiff does not dispute that DOC staff were
22 willing to photocopy his actual pleadings and mail them out. Instead, he wishes to attach copies
23 of policies, administrative codes and statutes to his response. According to DOC 590.500,
24 “[o]ther documents the offender can demonstrate would be attachments to a legal
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1 matter/proceeding” are not legal pleadings under the policy and will only be photocopied if the
2 offender pays for the copies at the time of the request. DOC 590.500, Legal Access For
3 Offenders, VIII(B)(3)(d).

4 Plaintiff could have filed his response to Defendants’ Motion and cited to the statutes
5 and codes he wanted to refer to without attaching them. The Court does not require copies of the
6 statutes and codes. In addition, Plaintiff is responsible for the costs of litigating his lawsuit and
7 he cannot shift his litigation costs on the Defendants.
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9 Accordingly, the Court **ORDERS:**

10 1) Plaintiff’s motion for stay (ECF No. 15) be **DENIED**; however, Plaintiff is
11 granted a short extension of time **until March 26, 2012** to file his response to Defendants’
12 motion to dismiss. Defendants may file a reply on **March 30, 2012**.

13 2) The Clerk shall **re-note** the motion to dismiss (ECF No. 14) for **March 30, 2012**
14 and send copies of this Order to Plaintiff and counsel for Defendants.
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16 **DATED** this 14th day of March, 2012.

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19 Karen L. Strombom
20 United States Magistrate Judge
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